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IN THE

Supreme Court of the United States

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October Term, 1965

No. 843

PAUL GINSBURG, *Petitioner*

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors by their Guardian Ad Litem, BETTY K. GINSBURG, *Respondents*

PETITION FOR REHEARING SUR MOTION TO REMAND

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The Petition For Rehearing Sur Motion To Remand of Paul Ginsburg Petitioner, respectfully represents:

1. On March 28, 1966 this Honorable Court entered an Order denying the petitioner's unopposed Motion To Remand.

2. This cause is an interpleader proceeding, involving the proceeds of policies of insurance on the life of petitioner's brother.

3. Your petitioner claimed the proceeds as the absolute owner, sole beneficiary, premium payer and possessor of the written contracts of insurance with the Mutual Life Insurance Company of New York.

4. The respondents claimed the proceeds under an alleged oral trust, that petitioner was to receive the proceeds not individually but only as a trustee for the decedent-insured's two sons, who are no longer minors. Their mother and former guardian is now Betty K. Meads.

5. In view of the foregoing, both claimants notified the insurer to pay Paul Ginsburg, the one claimant to pay him individually, the other claimant to pay him as a trustee. Consequently, the petitioner cautioned the insurer not to interplead, but to make the proceeds payable to him individually and/or as trustee, with the result that there could be no further liability on the insurer.

6. The insurer nevertheless interpleaded the proceeds in the Western Pennsylvania District Court. There the respondents through fraud procured an Order of Court changing the venue to the District Court of Arizona at Phoenix. Their fraud consisted of falsely representing that they had "three other witnesses" at Phoenix who could and would testify in support of the alleged oral trust; and further that they could not afford to travel to Pittsburgh from Phoenix to prosecute their claim, although they are the beneficiaries of trust funds in Pittsburgh which they claim to be worth in excess of $600,000.00 in addition to their Phoenix property.

7. At the "trial" in Phoenix before the late District Judge Dave W. Ling they did not even attempt to prove the alleged oral trust or any of the essential ingredients of a trust. District Court Judge Ling nonetheless awarded them the interpleaded fund plus 6% interest thereon from its inception, and thereupon erroneously and wickedly charged your petitioner with fraud for repudiating the non-existent, unproved and unprovable trust.

8. In the course of those proceedings, District Judge Ling refused to adjudicate on the merits any of the issues presented on behalf of your petitioner by the Phoenix law firm of Beer, Seaman & Polley. Those issues included the fraud of the respondents in procuring the Order of Transfer from the Western Pennsylvania District at Pittsburgh to the Arizona District at Phoenix; the resultant lack of jurisdiction in Arizona on the theory that, by reason of the fraud, the Pennsylvania District never lost jurisdiction and the Arizona District never acquired jurisdiction; and the right of petitioner to have the cause retransferred to Pittsburgh.

9. Consequently your petitioner sought a hearing and determination on the merits of those unadjudicated issues in the Arizona District Court, wherein the late disqualified District Judge Ling, having been automatically removed from the case through an Affidavit under Section 144 of the Judicial Code, deliberately returned (after his retirement) to enter an erroneous Order of Court, summarily dismissing the Motion without assigning any reasons for the dismissal. That Order of Court was the subject of the instant Appeal to the Court of Appeals for the Ninth Circuit, which erroneously dismissed the Appeal without adjudicating any of those issues.

10. In view of the foregoing, it is obvious that neither of the lower Courts has entered an adjudication on the merits of any of those important issues involved. It is respectfully submitted that although this Honorable Court is a Court of review, rather than a Court of justice, the denial of certiorari necessarily presupposes that the litigants had a chance in the lower Courts and received due process of law therein. The late Chief Justice Hughes asserted on this point that "Before a case has come to us, the litigants have had their day in court, and an appeal. We hear them not to decide on the relative merits of their case, but in the interests of the law itself". In the instant case your petitioner has unfortunately been denied a review by this Honorable

Court, which would result in a Remand to the District Court, while it is apparent from the Record that he had been denied his right to a Day in Court in the District Court, and of an effectual appeal in the Court of Appeals.

11. Paragraph 1 of Rule 19 of this Honorable Court states, "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor". The Rule then indicates the character of reasons which will be considered in subparagraph (b), which reasons are fully complied with in the Petition for Writ of Certiorari, included in The Reasons For The Allowance Of The Writ. It is respectfully submitted that in view of the substantial Petition herein and the above mentioned pronouncement by the late Chief Justice Hughes, this Honorable Court should have issued the Writ sought herein.

12. Thus it is respectfully submitted that this Honorable Court should grant the Petition for Writ of Certiorari, and then upon rehearing remand this cause to the United States District Court for the District of Arizona at Phoenix with directions that it hear and adjudicate those unadjudicated issues on the merits.

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner

CERTIFICATE OF COUNSEL

I hereby certify, pursuant to paragraph 1 of Rule 58, that the foregoing Petition for Rehearing Sur Motion to Remand is presented in good faith and not for delay.

PAUL GINSBURG
Counsel for Petitioner